

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 17, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

IRENE C.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO: 4:22-CV-5047-RMP

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND REMANDING FOR
CALCULATION OF BENEFITS

BEFORE THE COURT, without oral argument, are cross-motions for summary judgment from Plaintiff Irene C.¹, ECF No. 10, and Defendant the Commissioner of Social Security (the "Commissioner"), ECF No. 13. Plaintiff seeks judicial review, pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), of the Commissioner's denial of her claim for Disability Insurance Benefits ("DIB") under Title II, respectively, of the Social Security Act (the "Act"). *See* ECF No. 10 at 1.

¹ In the interest of protecting Plaintiff's privacy, the Court uses Plaintiff's first name and last initial.

1 Having considered the parties' motions, the administrative record, and the
2 applicable law, the Court is fully informed. For the reasons set forth below, the
3 Court grants Plaintiff's Motion for Summary Judgment, denies summary judgment
4 to the Commissioner, and remands for calculation of benefits.

5 BACKGROUND

6 *General Context*

7 Plaintiff applied for DIB on approximately March 29, 2018, alleging an onset
8 date on January 1, 2015. Administrative Record ("AR")² 15, 173–74. Plaintiff was
9 34 years old on the alleged disability onset date and asserted that she was unable to
10 work due to bipolar manic-depressive disorder, fibromyalgia, rheumatoid arthritis,
11 post-traumatic stress disorder, anxiety, attention deficit disorder, lumbar discogenic
12 pain syndrome, chronic pain syndrome, and paranoia. AR 199, 218. Plaintiff
13 alleged that she stopped working on January 1, 2013, because of her conditions. AR
14 199. Plaintiff's application was denied initially and upon reconsideration, and
15 Plaintiff requested a hearing. *See* AR 115–16.

16 On February 2, 2021, Plaintiff appeared for a hearing held by Administrative
17 Law Judge ("ALJ") MaryAnn Lunderman, hosting the hearing by telephone
18 conference from Albuquerque, New Mexico. AR 33–36. Plaintiff was represented
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20 ² The Administrative Record is filed at ECF No. 8.
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1 by counsel Chad Hatfield. AR 36. The ALJ heard from Plaintiff's counsel,
2 Plaintiff, and vocational expert Leta Berkshire. AR 36–69. ALJ Lunderman issued
3 an unfavorable decision on April 13, 2021, and the Appeals Council denied review.
4 AR 1–6, 29.

5 ***ALJ's Decision***

6 Applying the five-step evaluation process, ALJ Lunderman found:

7 **Step one:** Plaintiff last met the insured status requirements of the Social
8 Security Act on December 31, 2019. AR 17. Plaintiff did not engage in substantial
9 gainful activity between her alleged onset day of January 1, 2015, through the date
10 last insured of December 31, 2019. AR 17.

11 **Step two:** Plaintiff has the following severe impairments that are medically
12 determinable and significantly limit her ability to perform basic work activities:
13 inflammatory arthritis (rheumatoid arthritis seronegative); a spine disorder;
14 fibromyalgia; a trauma-/stressor-related disorder; a depressive/bipolar disorder; an
15 anxiety/obsessive compulsive disorder; and a substance addiction disorder (drugs),
16 pursuant to 20 C.F.R. §§ 404.1520(c). AR 17. The ALJ further found that “all other
17 medically determinable impairments established by the medical evidence, such as
18 gastroesophageal reflux disease and Bell's palsy[,] are not severe impairments
19 because the impairments caused no more than minimal functional residual
20 limitations. AR 17 (citing AR 459, 478, 484, 1070).

1 **Step three:** The ALJ concluded that through the date last insured, Plaintiff did
2 not have an impairment or combination of impairments that met or medically
3 equaled the severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart
4 P, Appendix 1. AR 18 (citing 20 C.F.R. §§ 404.1520(d), 404.1525, and 404.1526).
5 The ALJ memorialized that Plaintiff’s physical impairments did not meet, or
6 medically equal, listings 1.15 for disorders of the skeletal spine resulting in
7 compromise of a nerve root, 1.16 for lumbar spinal stenosis resulting in compromise
8 of the cauda equine, or 14.09 for inflammatory arthritis. AR 18. The ALJ wrote that
9 she found “these impairments did not meet these listings, even when considering the
10 listings in light of SSR 12-2p, which is use[d] when evaluating fibromyalgia.” AR
11 19.

12 With respect to Plaintiff’s mental impairments, the ALJ considered listings
13 12.04 for depressive, bipolar, and related disorders; 12.06 for anxiety and obsessive-
14 compulsive disorders; or 12.15 for trauma- and stressor-related disorders. AR 18.
15 The ALJ considered whether Plaintiff’s impairments satisfy the “paragraph B”
16 criteria, requiring at least one extreme or two marked limitations in four broad areas
17 of functioning. The ALJ found Plaintiff only moderately limited in understanding,
18 remembering, or applying information; interacting with others; concentrating,
19 persisting, or maintaining pace; and adapting or managing oneself. AR 18–19.

1 Therefore, the ALJ found that the “paragraph B” criteria were not satisfied and
2 further found that the “paragraph C” criteria are “not present in this case.” AR 19.

3 **Residual Functional Capacity (“RFC”):** The ALJ found that Plaintiff,
4 through the date last insured, had the RFC to perform a “limited range of light
5 work,” as defined in 20 C.F.R. § 404.1567(b), with certain exceptions. AR 19. The
6 ALJ further defined the RFC as follows:

7 Specifically, all postural activities must have been limited to frequently
8 except for balancing, which was unlimited, and the climbing of ladders,
9 ropes, and scaffolds which was limited to occasionally. Within the
10 assigned work area, there must have been less than occasional
11 concentrated exposure to extreme cold, vibrations, and hazards, such as
12 machinery and heights. The assigned work must have been limited to
13 simple, unskilled tasks with a specific vocational preparation (SVP)
14 rating of 1 or 2 and a reasoning level of 1 or 2. The assigned work must
15 have been performed primarily independently not in tandem or as a
16 member of a team or crew and must have required no contact with the
17 public and no greater than brief intermittent work related contact with
18 coworkers and supervisors. Finally, the assigned work must have
19 allowed as frequently as every 25 minutes, the option to sit or stand at
20 will while remaining at the assigned workstation and on task.

21 AR 19 (as written in original).

In determining Plaintiff’s RFC, the ALJ found that Plaintiff’s statements
concerning the intensity, persistence, and limiting effects of her alleged symptoms
“are not entirely consistent with the medical evidence and other evidence in the
record for the reasons explained in this decision.” AR 20.

Step four: The ALJ found that Plaintiff was unable to perform any past
relevant work through the date last insured. AR 27 (citing 20 C.F.R. § 404.1563).

1 legal error or not supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d
2 993, 995 (9th Cir. 1985) (citing 42 U.S.C. § 405(g)). “The [Commissioner’s]
3 determination that a claimant is not disabled will be upheld if the findings of fact are
4 supported by substantial evidence.” *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir.
5 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere
6 scintilla, but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112,
7 1119 n.10 (9th Cir. 1975); *McCallister v. Sullivan*, 888 F.2d 599, 601–02 (9th Cir.
8 1989). Substantial evidence “means such evidence as a reasonable mind might
9 accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389,
10 401 (1971) (citations omitted). “[S]uch inferences and conclusions as the
11 [Commissioner] may reasonably draw from the evidence” also will be upheld. *Mark*
12 *v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the
13 record, not just the evidence supporting the decisions of the Commissioner.
14 *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989).

15 A decision supported by substantial evidence still will be set aside if the
16 proper legal standards were not applied in weighing the evidence and making a
17 decision. *Browner v. Sec’y of Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir.
18 1988). Thus, if there is substantial evidence to support the administrative findings,
19 or if there is conflicting evidence that will support a finding of either disability or
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1 nondisability, the finding of the Commissioner is conclusive. *Sprague v. Bowen*,
2 812 F.2d 1226, 1229–30 (9th Cir. 1987).

3 ***Definition of Disability***

4 The Social Security Act defines “disability” as the “inability to engage in any
5 substantial gainful activity by reason of any medically determinable physical or
6 mental impairment which can be expected to result in death or which has lasted or
7 can be expected to last for a continuous period of not less than 12 months.” 42
8 U.S.C. §§ 423(d)(1)(A). The Act also provides that a claimant shall be determined
9 to be under a disability only if her impairments are of such severity that the claimant
10 is not only unable to do her previous work, but cannot, considering the claimant’s
11 age, education, and work experiences, engage in any other substantial gainful work
12 which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A). Thus, the
13 definition of disability consists of both medical and vocational components. *Edlund*
14 *v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

15 ***Sequential Evaluation Process***

16 The Commissioner has established a five-step sequential evaluation process
17 for determining whether a claimant is disabled. 20 C.F.R. § 404.1520. Step one
18 determines if he is engaged in substantial gainful activities. If the claimant is
19 engaged in substantial gainful activities, benefits are denied. 20 C.F.R. §
20 404.1520(a)(4)(i).

1 If the claimant is not engaged in substantial gainful activities, the decision
2 maker proceeds to step two and determines whether the claimant has a medically
3 severe impairment or combination of impairments. 20 C.F.R. § 404.1520(a)(4)(ii).
4 If the claimant does not have a severe impairment or combination of impairments,
5 the disability claim is denied.

6 If the impairment is severe, the evaluation proceeds to the third step, which
7 compares the claimant's impairment with listed impairments acknowledged by the
8 Commissioner to be so severe as to preclude any gainful activity. 20 C.F.R. §
9 404.1520(a)(4)(iii); *see also* 20 C.F.R. § 404, Subpt. P, App. 1. If the impairment
10 meets or equals one of the listed impairments, the claimant is conclusively presumed
11 to be disabled.

12 If the impairment is not one conclusively presumed to be disabling, the
13 evaluation proceeds to the fourth step, which determines whether the impairment
14 prevents the claimant from performing work that she has performed in the past. If
15 the claimant can perform her previous work, the claimant is not disabled. 20 C.F.R.
16 § 404.1520(a)(4)(iv). At this step, the claimant's RFC assessment is considered.

17 If the claimant cannot perform this work, the fifth and final step in the process
18 determines whether the claimant is able to perform other work in the national
19 economy considering her residual functional capacity and age, education, and past
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1 work experience. 20 C.F.R. § 404.1520(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137,
2 142 (1987).

3 The initial burden of proof rests upon the claimant to establish a prima facie
4 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
5 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
6 is met once the claimant establishes that a physical or mental impairment prevents
7 her from engaging in her previous occupation. *Meanel*, 172 F.3d at 1113. The
8 burden then shifts, at step five, to the Commissioner to show that (1) the claimant
9 can perform other substantial gainful activity, and (2) a “significant number of jobs
10 exist in the national economy” which the claimant can perform. *Kail v. Heckler*, 722
11 F.2d 1496, 1498 (9th Cir. 1984).

12 ISSUES ON APPEAL

13 The parties’ motions raise the following issues regarding the ALJ’s decision:

- 14 1. Did the ALJ err by denying reopening of Plaintiff’s prior application?
- 15 2. Did the ALJ err at step three in determining that Plaintiff does not meet
16 or equal a listing?
- 17 3. Did the ALJ erroneously evaluate the medical opinion evidence?
- 18 4. Did the ALJ erroneously reject Plaintiff’s subjective complaints?
- 19 5. Did the ALJ err at step five by failing to conduct an adequate analysis?

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1 ***Reopening Prior Application***

2 Plaintiff argues that the ALJ should have reopened Plaintiff's prior claim,
3 filed in December 2016 and denied in April 2017, as Plaintiff requested at the 2021
4 hearing. ECF No. 10 at 9 (citing AR 43, 72). Plaintiff submits that the ALJ should
5 have made findings about Plaintiff's request and should have reopened the prior
6 claim because there was a disabling opinion from psychiatrist Kirsten Nestler, MD
7 in the interim, on March 11, 2017. *Id.* at 9–10. Plaintiff adds, "This would arguable
8 [sic] result in the need to reevaluate the medical opinions under the prior
9 regulations." *Id.* at 10.

10 The Commissioner responds that refusals to reopen prior applications do not
11 constitute reviewable, final decisions. ECF No. 13 at 2 (citing *Panages v. Bowen*,
12 871 F.2d 91, 93–94 (1989); *Califano v. Sanders*, 430 U.S. 99, 107–09 (1977)). The
13 Commissioner submits that it is not significant that the ALJ did not "*expressly*
14 decline to reopen [Plaintiff's] prior application" where the ALJ's discretionary
15 decision is "not reviewable in the first instance." ECF No. 13 at 2–3.

16 Plaintiff filed an application for DIB and Social Security insurance in
17 December 2016, and did not appeal its denial on April 5, 2017. AR 90. At the
18 hearing on February 2, 2021, Plaintiff's counsel requested that the ALJ reopen
19 Plaintiff's prior application, asserting that Plaintiff "just didn't understand the
20 process without an attorney" and that Plaintiff's "pain complaint became more
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1 developed and made a record.” AR 43. The ALJ took the matter under
2 consideration and did not discuss reopening the application in her April 13, 2021
3 decision.

4 An ALJ’s refusal to reopen an earlier decision is “strictly discretionary, not
5 final, and thus not generally reviewable by a district court.” *Smith v. Berryhill*, Case
6 No. 17-cv-647-RAJ, 2018 U.S. Dist. LEXIS 27088 at *7 (W.D. Wash. Feb. 20,
7 2018) (citing *Dexter v. Colvin*, 731 F.3d 977, 980 (9th Cir. 2013)). However,
8 judicial review is available to plaintiffs who raise a colorable constitutional claim
9 regarding the decision not to reopen. *Califano*, 430 U.S. at 108–09. Plaintiff makes
10 no argument about any constitutional violation and does not present any other basis
11 on which a decision about reopening a prior claim is reviewable. Therefore, the
12 Court finds no basis to reverse or remand based on this issue.

13 ***Medical Opinions***

14 Plaintiff argues that the ALJ erroneously evaluated medical source opinions
15 from: (1) examining psychiatrist Kirsten Nestler, MD; (2) examining psychologist
16 K. Mansfield-Blair, PhD; (3) treating nurse practitioner Angela Combs, ARNP; (4)
17 treating nurse practitioner Matthew Palmblad, ARNP; and (5) treating nurse
18 practitioner Diane Hanks, FNP. ECF No. 10 at 10–17.

19 Defendant responds that the ALJ reasonably evaluated the relevant opinions
20 according to the appropriate framework. ECF No. 13 at 8–15.

1 The regulations that took effect on March 27, 2017, provide a new framework
2 for the ALJ's consideration of medical opinion evidence and require the ALJ to
3 articulate how persuasive she finds all medical opinions in the record, without any
4 hierarchy of weight afforded to different medical sources. *See* Rules Regarding the
5 Evaluation of Medical Evidence, 82 Fed. Reg. 5844-01, 2017 WL 168819 (Jan. 18,
6 2017). Instead, for each source of a medical opinion, the ALJ must consider several
7 factors, including supportability, consistency, the source's relationship with the
8 claimant, any specialization of the source, and other factors such as the source's
9 familiarity with other evidence in the claim or an understanding of Social Security's
10 disability program. 20 C.F.R. § 404.1520c(c)(1)-(5).

11 Supportability and consistency are the "most important" factors, and the ALJ
12 must articulate how she considered those factors in determining the persuasiveness
13 of each medical opinion or prior administrative medical finding. 20 C.F.R. §
14 404.1520c(b)(2). With respect to these two factors, the regulations provide that an
15 opinion is more persuasive in relation to how "relevant the objective medical
16 evidence and supporting explanations presented" and how "consistent" with
17 evidence from other sources the medical opinion is. 20 C.F.R. § 404.1520c(c)(1).
18 The ALJ may explain how she considered the other factors, but is not required to do
19 so, except in cases where two or more opinions are equally well-supported and
20 consistent with the record. 20 C.F.R. § 404.1520c(b)(2), (3). Courts also must
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1 continue to consider whether the ALJ's finding is supported by substantial evidence.
2 *See* 42 U.S.C. § 405(g) ("The findings of the Commissioner of Social Security as to
3 any fact, if supported by substantial evidence, shall be conclusive . . .").

4 Prior to revision of the regulations, the Ninth Circuit required an ALJ to
5 provide clear and convincing reasons to reject an uncontradicted treating or
6 examining physician's opinion and provide specific and legitimate reasons where the
7 record contains a contradictory opinion. *See Revels v. Berryhill*, 874 F.3d 648, 654
8 (9th Cir. 2017). However, the Ninth Circuit has held that the Social Security
9 regulations revised in March 2017 are "clearly irreconcilable with [past Ninth
10 Circuit] caselaw according special deference to the opinions of treating and
11 examining physicians on account of their relationship with the claimant." *Woods v.*
12 *Kijakazi*, No. 21-35458, 2022 U.S. App. LEXIS 10977, at *14 (9th Cir. Apr. 22,
13 2022). The Ninth Circuit continued that the "requirement that ALJs provide
14 'specific and legitimate reasons' for rejecting a treating or examining doctor's
15 opinion, which stems from the special weight given to such opinions, is likewise
16 incompatible with the revised regulations." *Id.* at *15 (internal citation omitted).

17 Accordingly, as Plaintiff's claim was filed after the new regulations took
18 effect, the Court refers to the standard and considerations set forth by the revised
19 rules for evaluating medical evidence. *See* AR 173–74.

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1 **Drs. Nestler and Mansfield-Blair**

2 Plaintiff argues that the ALJ did not properly evaluate the supportability or
3 consistency of the mental health physicians’ professional findings. ECF No. 10 at
4 11–12. Plaintiff submits that the ALJ “is unable to identify any activities that are
5 inconsistent” with the limitations that the physicians assessed. *Id.* at 11. Rather,
6 Plaintiff argues, the longitudinal record documents “consistently severe mental
7 health symptomology” and Plaintiff’s inability to stabilize her mood, despite
8 numerous medication trials. *Id.* at 11–12. Plaintiff asserts that the ALJ merely
9 substituted her lay judgment for the “well-supported and consistently disabling
10 opinions of Dr. Nestler and Dr. Mansfield-Blair, who completed independent
11 comprehensive assessments two years apart.” *Id.* at 12.

12 The Commissioner responds that the ALJ reasonably found that Plaintiff’s
13 reports of doing all of the cooking for her family, leaving her home daily, and
14 preparing her children breakfast and taking them to school was inconsistent with the
15 examining physicians’ opinions that Plaintiff would have difficulty performing
16 activities and maintaining attendance on a consistent basis or deal with usual stress.
17 ECF No. 13 at 9–10 (citing AR 338, 1038). The Commissioner acknowledges that
18 Plaintiff’s longitudinal record shows mood instability but counters that the record
19 also reflects “frequently normal attention, concentration, judgment, insight,
20 cognition, and behavior.” ECF No. 13 at 10 (with no citation).

1 Plaintiff replies that the records cited by the Commissioner demonstrate that
2 Plaintiff prepares just one meal per day, engages in minimal self-care, such as
3 showering only once or twice per week, receives help from her children with chores,
4 and relies on her daughter or her husband to drive her places. ECF No. 14 at 4
5 (citing AR 338, 1038). Plaintiff also submits that the only citations or reasoning
6 offered by Defendant to support the ALJ's decision is in the form of Plaintiff's
7 "waxing and waning mental health symptoms and the fact that the claimant is a
8 parent." *Id.* at 3.

9 Dr. Nestler examined Plaintiff on March 11, 2017, and opined that Plaintiff
10 can manage her own finances and can perform simple, repetitive tasks as well as
11 detailed, complex tasks. AR 337, 340. However, Dr. Nestler found that, due to
12 Plaintiff's multiple chronic mental health disorders, Plaintiff would have difficulty:
13 accepting instructions from supervisors and interacting with coworkers; performing
14 work activities on a consistent basis without special or additional instructions;
15 maintaining regular attendance in the workplace; completing a normal
16 workday/workweek without interruptions; and dealing with the usual stress
17 encountered in the workplace. AR 341.

18 Dr. Mansfield-Blair examined Plaintiff on April 27, 2019, and found that
19 Plaintiff would have difficulty with the same activities as those recited by Dr.
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1 Nestler except that Dr. Mansfield also found that Plaintiff would have difficulty
2 performing detailed and complex tasks. AR 1036–41.

3 ALJ Lunderman found Dr. Nestler’s and Dr. Mansfield-Blair’s opinions
4 “unpersuasive.” ALJ Lunderman acknowledged that the examiners’ opinions are
5 “somewhat supported by contemporaneous objective findings.” AR 24–25.

6 However, the ALJ found the examiners’ opinions inconsistent with Plaintiff’s ability
7 to engage in a variety of activities, as reported to Dr. Nestler in 2017, and with the
8 “record as a whole, which establishes improvement when compliant with medication
9” AR 24–25 (citing AR 328, 333, 338, 349, 374, 383, 447, 449, 455, 465, 471,
10 479, 493, 976, 989, 1012, 1024, 1099, 1176, 1188, 1223).

11 Reviewing the documents cited by the ALJ, the Court does not find that the
12 record plainly documents improvement with medication, and, instead, indicates that
13 Plaintiff had, at the least, waxing and waning mental health symptoms. The record
14 also supports that Plaintiff experienced persistent mental health symptoms even
15 while providers were overseeing her medication regimen. The ALJ was correct that
16 the medical records indicate that Plaintiff presented at pain treatment appointments
17 with intact memory and good insight and judgment. AR 328, 333, 349, 1176, 1188,
18 1223. However, in 2017, a primary care treatment note cited by the ALJ recounts
19 normal mental status examination findings alongside a finding that Plaintiff had a
20 euthymic mood and a mood-congruent affect, and the provider recommended that
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1 Plaintiff continue on her current medications. AR 492–93. Appointment notes from
2 a September 2018 psychiatric diagnostic evaluation indicate that Plaintiff’s mental
3 status exam found that Plaintiff had an anxious mood even while her other mental
4 status findings were unremarkable. AR 374. Plaintiff was “[o]n bipolar
5 medications” but reported “[c]ontinued ups and downs, more downs.” AR 371. A
6 treatment note from two weeks later, in October 2018, indicates that Plaintiff
7 reported “feeling fine” and doing “much better,” and reported that a medication she
8 had recently been prescribed improved her sleep and anxiety. AR 383 (also
9 reporting that she had not noticed a decrease in her depressive symptoms with the
10 medication she was prescribed). Other treatment notes from providers seeing
11 Plaintiff for physical complaints in 2018 observe that Plaintiff presented with a
12 normal mood and affect and that her judgment, thought content, and memory were
13 normal. AR 455, 465, 471, 479. An October 2019 appointment note indicated that
14 Plaintiff would be continued on her current medication regimen and that Plaintiff
15 reported “doing well,” but also shared that “she does suffer from decreased mood
16 and anxiety during the colder months of the year.” AR 1099–1100. Again, the
17 material cited by the ALJ does not comport with the ALJ’s reasoning that Plaintiff
18 improved when compliant with medication or that Plaintiff’s impairments were
19 effectively controlled by medication to a level at which she could sustain
20 competitive employment. Rather Plaintiff’s mental health treatment records indicate
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1 that Plaintiff continued to present with an anxious or depressed mood, even while
2 taking medications. *See* AR 371, 374.

3 With respect to the daily activities that Plaintiff reported to Dr. Nestler, the
4 report indicates that Plaintiff “does all of the cooking for the household,” goes
5 grocery shopping approximately twice per week, and “drops off the kids at school
6 then she goes back to her room, watches television until her children get out of
7 school.” AR 338. Dr. Nestler further recorded that Plaintiff can do “minimal self-
8 care” and “showers perhaps once or twice a week” and receives help from her
9 children with chores around the house. AR 338. Plaintiff reported that her husband
10 or daughter drives her where she needs to go. AR 1038. The ALJ does not specify
11 how Dr. Nestler’s or Dr. Mansfield-Blair’s opinions are inconsistent with the
12 activities or level of activity that Plaintiff reported, and the activities were not
13 inherently inconsistent with disability. *See Ghanim v. Colvin*, 763 F.3d 1154, 1162
14 (9th Cir. 2014) (holding that a claimant’s ability to complete “some basic chores and
15 occasionally socialize[]” was a insufficient reason to discount a medical source’s
16 opinion where a “holistic review of the record” showed the claimant “relied heavily
17 on his caretaker, struggled with social interactions, and limited himself to low-stress
18 environments.”).

1 As neither of the reasons that the ALJ provided for discounting Dr. Nestler's
2 and Dr. Mansfield-Blair's opinions was supported by substantial evidence, the Court
3 finds that the ALJ erred in her treatment of these medical source opinions.

4 **ARNP Combs**

5 Plaintiff maintains that the ALJ improperly rejected Plaintiff's treating
6 provider's opinion for infringing on an issue reserved to the Commissioner, whether
7 Plaintiff meets or equals a listing. ECF No. 10 at 13–14. Plaintiff asserts that
8 ARNP Combs "did not just state she meets a listing but provided an opinion on the
9 severity of the "B" criteria and the "C" criteria," and "such opinions cannot be
10 simply disregarded." *Id.* Plaintiff further argues that the ALJ erred in rejecting
11 ARNP Combs's opinion as inconsistent with the longitudinal record "without
12 providing any details or explanation, and then simply rejected it based on
13 [Plaintiff's] alleged marijuana use." *Id.* at 14 (citing AR 26).

14 The Commissioner responds that the ALJ legitimately found that a statement
15 about whether a claimant's impairments meet or medically equal a Listing is
16 reserved to the Commissioner. ECF No. 13 at 11 (citing AR 26; 20 C.F.R. §
17 404.1520b(c)(3)(iv)). The Commissioner further argues that the ALJ cited to
18 evidence to discount ARNP Comb's opinion, including that Plaintiff has presented
19 with "normal thought process, perception, and content, and with normal insight,
20 cognition, and judgment." ECF No. 13 at 11–12 (citing AR 26, 374, 379–80).

1 ARNP Combs completed a medical source form on January 10, 2021. AR
2 1273–76. ARNP Combs indicated the following opinions on the form: (1) Plaintiff
3 is markedly limited in the ability to complete a normal workday and workweek
4 without interruptions from psychologically based symptoms and to perform at a
5 consistent pace without an unreasonable number and length of rest periods; in her
6 ability to get along with coworkers or peers without distracting them or exhibiting
7 behavioral extremes; and in the ability to respond appropriately to changes in the
8 work setting; (2) Plaintiff is severely limited in the ability to travel in unfamiliar
9 places or use public transportation; (3) Plaintiff suffers marked limitation in the “B”
10 criteria of concentrating, persisting, or maintaining pace and meets the “C” criteria,
11 as even a minimal increase in mental demands or change in the environment likely
12 would cause her to decompensate; (4) Plaintiff would be off task and unproductive
13 over thirty percent of a forty-hour week; (5) Plaintiff would miss four or more days
14 of work per month; (6) her mood instability and anxiety often limit her ability to
15 sustain attention and attend work obligations; and (7) despite medication trials, her
16 moods continue to fluctuate and cannot be considered stable. AR 1273–76. ARNP
17 Combs further commented: “Although [Plaintiff] is highly capable and intelligent[,]
18 her mood instability and anxiety often limits her ability to sustain attention and
19 attend to work obligations. Despite multiple medication trials, her moods continue to
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1 fluctuate and cannot be considered stable. Until new treatment options are available
2 it is not likely that stability will occur.” AR 1276.

3 The ALJ found ARNP Combs’s determination that there was listing-level
4 criteria “inherently neither valuable nor persuasive,” as this is an issue that is
5 reserved to the Commissioner. AR 26. The ALJ further found the remainder of
6 ARNP Combs’s opinion “unpersuasive.” AR 26. The ALJ acknowledged that the
7 opinion was “supported with reference to fluctuating mood, which she noted could
8 not be considered stable despite use of medication.” AR 26. However, the ALJ
9 reasoned that ARNP Combs’s opinion was inconsistent with “evidence establishing
10 the cited degree of abnormal objective findings did not persist across the
11 longitudinal period at issue” and evidence that Plaintiff’s symptoms “when more
12 compliant with use of medication the symptoms were not as severe as assessed by
13 Ms. Combs.” AR 26.

14 The Court does not find error in the ALJ’s determination that ARNP Combs’s
15 opinion about listing-level criteria lacks value and is not persuasive. *See* 20 C.F.R. §
16 404.1527(d) (noting that the ultimate issue of disability is reserved for the
17 Commissioner, and opinions on that issue are not considered medical opinions nor
18 are they given any special significance). However, this reasoning does not support
19 the ALJ’s rejection of the remainder of ARNP Combs’s opinion. *See William D. v.*

1 *Berryhill*, No. 6:18-cv-38-SI, 2019 U.S. Dist. LEXIS 72311, at *37 (D. Or. Apr. 30,
2 2019) (citing *Ghanim*, 763 F.3d at 1161).

3 The exhibits cited by the ALJ in support of her reasoning that Plaintiff's
4 symptoms were not as severe as found by ARNP Combs when "more compliant"
5 with medication or across the longitudinal record does not amount to substantial
6 evidence directly supporting these conclusions. The ALJ's citations for this
7 reasoning mirror the citations that Court reviewed above, and the Court does not find
8 evidence indicating that Plaintiff was more or less compliant at certain points in the
9 longitudinal record than others. *See* AR 328, 333, 338, 349, 374, 383, 447, 449,
10 455, 465, 471, 479, 493, 976, 989, 1012, 1024, 1099, 1176, 1188, 1223. Plaintiff
11 also continued to present with significant mental health symptoms even when she
12 was reporting improvement following modifications to her medication regimen. *See*
13 AR 371, 374, 383, 492–93. Moreover, a connection between Plaintiff's marijuana
14 use and the supportability or consistency of ARNP Combs's opinion is not clear on
15 the face of the ALJ's decision.

16 Finding that the ALJ did not provide germane reasons, nor reasons supported
17 by substantial evidence, for discounting ARNP Combs's opinion, the ALJ's
18 treatment of this medical source opinion also amounts to reversible error.

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1 **ARNP Palmblad**

2 Plaintiff argues that the ALJ erred in rejecting ARNP Palmblad's opinion
3 simply because he did not begin treating Plaintiff until after the date last insured,
4 without evaluating the supportability or consistency of the opinion. ECF No. 19 at
5 16 (citing AR 23).

6 The Commissioner responds that the ALJ's reasoning for rejecting ARNP
7 Palmblad's opinion "has support in Ninth Circuit law." ECF No. 13 at 13 (citing
8 *Lair-Del Rio v. Astrue*, 380 F.App'x 694, 695 (9th Cir. 2010) (finding ALJ justified
9 in rejecting medical opinion evidence postdating the date last insured)). The
10 Commissioner further argues that, even if the ALJ's analysis were erroneous, the
11 error is harmless because the same reasons that the ALJ gave for rejecting similar
12 evidence, such as Plaintiff's daily activities and improvement of Plaintiff's
13 symptoms with treatment, is relevant to discounting ARNP Palmblad's opinion.

14 ARNP Palmblad completed a Medical Report form for Plaintiff on January 5,
15 2021, on which he indicated that he first treated Plaintiff on March 10, 2020. AR
16 1270–72. ARNP Palmblad reviewed Plaintiff's physical and mental health
17 conditions and medical history and opined that due to depression, anxiety, bipolar
18 disorder, PTSD, fibromyalgia, and rheumatoid arthritis, Plaintiff: must lie down
19 during the day due to chronic back pain and the need to use a spinal cord stimulator;
20 experiences daytime fatigue and sleepiness from her mental health medications;

1 experienced a deterioration in her mental and physical health when she previously
2 worked full-time in 2014; would miss four or more days of work per month; is
3 severely limited and unable to meet the demands of even sedentary work; is
4 restricted to frequent use of her upper extremities; and would be off task and
5 unproductive over thirty percent of a forty-hour workweek. AR 1270–72. ARNP
6 Palmblad opined that Plaintiff’s limitations have existed since at least December 31,
7 2019. AR 1270–72.

8 The ALJ found ARNP Palmblad’s opinion unpersuasive “because the
9 statement is not relevant to the period at issue, which is from the alleged onset date
10 of January 1, 2015 [sic] through the date last insured of December 31, 2019.” AR
11 23.

12 Given that ARNP Palmblad opined that Plaintiff’s limitations had existed
13 since at least December 2019, within the relevant period, the Court finds that the
14 opinion being issued outside of the relevant period is not a sufficient reason for
15 rejecting it. *See* AR 23, 1272. Furthermore, the Court has already determined that
16 the reasoning provided by the ALJ in discounting similar opinion evidence was
17 marred by harmful error. Therefore, the Court finds that the ALJ erred in her
18 evaluation of ARNP Palmblad’s opinion.

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FNP Hanks

Plaintiff argues that the ALJ erroneously rejected FNP Hanks’s opinion on “boilerplate findings” without assessing the consistency or supportability of FNP Hanks’s disabling findings. ECF No. 10 at 17.

The Commissioner responds that the ALJ reasonably discounted FNP Hanks’s opinion on the basis that it was on an issue reserved to the commissioner, namely whether Plaintiff can perform regular or continuing work. ECF No. 13 at 14–15.

FNP Hanks opined on a check-box form on January 5, 2017, that Plaintiff cannot perform any type of work on a reasonably continuous, sustained basis due to her rheumatoid arthritis, PTSD, bipolar disorder, and anxiety. AR 1268.

The ALJ found FNP Hanks’s opinion “neither valuable nor persuasive,” as the ultimate issue of disability is reserved to the Commissioner. AR 23.

FNP Hanks’s sole opinion on the January 5, 2017 form addresses the ultimate issue of whether Plaintiff can work and does not offer insight into any specific limitation. Consequently, FNP Hanks did not provide a medical source opinion. *See* 20 C.F.R. § 404.1527(d) (noting that the ultimate issue of disability is reserved for the Commissioner, and opinions on that issue are not considered medical opinions, nor are they given any special significance). The Court does not find error in the ALJ’s evaluation of FNP Hanks’s opinion.

1 Having found that the ALJ erred in her treatment of four medical source
2 opinions, the Court grants summary judgment to Plaintiff on this issue and denies
3 summary judgment to the Commissioner on the same.

4 ***Subjective Symptom Testimony***

5 Plaintiff argues that the ALJ did not provide the requisite clear and convincing
6 reasons for making a negative credibility determination and instead offered “little
7 more than vague assertions that the claimant’s allegations are unsupported by the
8 objective medical evidence of record, contrary to law.” ECF No. 10 at 18–19 (citing
9 *Robbins v. Commissioner*, 466 F.3d 880 (9th Cir. 2006)). Plaintiff asserts that the
10 ALJ does not cite any records to support her allegation that Plaintiff has not been
11 compliant with treatment, nor does she offer any explanation for how Plaintiff was
12 allegedly noncompliant. *Id.* at 19 (citing AR 21, 50, wherein the ALJ noted that
13 Plaintiff testified to stretching). Plaintiff further argues that the ALJ erroneously
14 rejected Plaintiff’s symptom complaints based on evidence of waxing and waning
15 symptoms. *Id.* at 20 (citing *Garrison v. Colvin*, 759 F.3d 995, 1017–18 (9th Cir.
16 2014); *Attmore v. Colvin*, 827 F.3d 872, 878 (9th Cir. 2016)).

17 The Commissioner responds that the ALJ provided clear and convincing
18 reasons, supported by substantial evidence, for her assessment of Plaintiff’s
19 subjective complaints. ECF No. 13 at 3. The Commissioner asserts that the ALJ
20 acknowledged that Plaintiff is limited by her impairments in formulating a “quite
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1 restrictive RFC.” *Id.* at 4. With respect to the subjective symptom complaints that
2 the ALJ did not accept “at face value,” the Commissioner argues that Plaintiff’s
3 testimony that she has no friends is inconsistent with her use of Facebook to
4 communicate with friends and family. *Id.* at 4 (citing AR 49, 271). The
5 Commissioner maintains that Plaintiff’s reports of “making breakfast for her
6 children and dropping them off at school, gardening in the summer, grocery
7 shopping twice a week, and doing ‘all the cooking for the household’” reasonably
8 undermine Plaintiff’s testimony that she “could not do housework, cooked very little
9 because she was forgetful, was bedbound or housebound up to a third of the month,
10 and could sit for only limited periods.” *Id.* at 5. The Commissioner also asserts that
11 Plaintiff’s report of driving to Texas in 2018 contradicts her alleged sitting
12 limitations. *Id.* at 5–6 (citing AR 21, 470, 472). The Commissioner continues that,
13 in addition to relying on substantial evidence with respect to Plaintiff’s regular
14 activities, the ALJ reasonably relied on evidence showing that Plaintiff’s course of
15 treatment improved her symptoms. *Id.* at 6 (citing AR 21).

16 Plaintiff replies that the ALJ erred by acknowledging the record evidence of
17 “consistent findings of psychomotor agitation, restlessness, anxious, dysphoric
18 mood, congruent affect, and difficulty with attention and concentration” while
19 apparently “dismiss[ing] these longitudinal findings for a single episode showing
20 alleged improvement in symptomology in October 2019.” ECF No. 14 at 11
21

1 (quoting AR 22). Plaintiff also contends that Plaintiff’s activities of daily living
2 were an inadequate basis on which to discount her testimony. ECF No. 14 at 11–12
3 (citing *Trevizo v. Berryhill*, 871 F.3d 664, 682 (9th Cir. 2017) (“[T]he mere fact that
4 she cares for small children does not constitute an adequately specific conflict with
5 her reported limitations.”)).

6 In deciding whether to accept a claimant’s subjective pain or symptom
7 testimony, an ALJ must perform a two-step analysis. *Smolen v. Chater*, 80 F.3d
8 1273, 1281 (9th Cir. 1996). First, the ALJ must evaluate “whether the claimant has
9 presented objective medical evidence of an underlying impairment ‘which could
10 reasonably be expected to produce the pain or other symptoms alleged.’”
11 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (quoting *Bunnell v.*
12 *Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)). Second, if the first test is met and there
13 is no evidence of malingering, “the ALJ can reject the claimant’s testimony about
14 the severity of her symptoms only by offering specific, clear and convincing reasons
15 for doing so.” *Smolen*, 80 F.3d at 1281.

16 The ALJ noted the following testimony from Plaintiff:

17 The claimant testified she was “snapping” at others when she was
18 working. She attributed this to irritability due to her physical
19 impairments, which caused increased joint, muscle, and back pain,
20 which persisted despite compliance with prescribed medication. The
21 claimant testified pain limits her residual ability to lift to less than 10
pounds, sitting to 30 to 45 minutes, standing to 45 minutes, and walking
to no more than a couple of blocks. She also testified pain limits the
ability to do housework and while she tries to help, her husband and

1 children do most of the housework. The claimant's husband does the
2 laundry and she cooks but very little because her ability to cook is
limited to small meals because she gets distracted.

3 The claimant testified pain medication causes side effects, including
4 being tired all the time which is in addition to fatigue she experiences
5 during flares due to inflammatory arthritis, which occur once or twice
6 a month or flares due to fibromyalgia, which occur once or twice a
7 week. She testified when having flares due to inflammatory arthritis or
8 fibromyalgia, she is less functional and experiences "fibro fog." Even
9 when not having a flare, the claimant testified she must lay down three
to four times a day. She reports her pain triggers her underlying mental
10 symptoms and this results in being irritable toward her family and she
report [sic] she sometimes "snaps" at them. She testified she has to have
11 someone with her when she leaves the house. She also testified that two
to three times a month and sometimes for more than one day at a time,
12 she does not want to leave the house due to symptoms of depression
and anxiety.

13 AR 20. The ALJ found that Plaintiff's testimony about the severity of her
14 impairments is undermined by evidence of her "issues with treatment compliance,"
15 both with respect to Plaintiff's physical symptoms and her mental health
16 impairments. AR 21–22. For Plaintiff's mental health symptoms, the ALJ found
17 that "medical evidence of record . . . reflects noncompliant [sic] with follow up [sic]
18 appointments and use of medications prescribed for mental symptoms throughout
19 the longitudinal period at issue." AR 22. However, the ALJ does not cite anything
20 for that proposition. The ALJ contrasts Plaintiff's mostly abnormal mental status
21 examinations from May 2015 through September 2018 with "more recent" evidence
that, according to the ALJ, shows that Plaintiff's medications are effective in treating
her mental health symptoms when Plaintiff is compliant with her regimen. AR 22.

1 In support, the ALJ cited the same records examined above, with respect to the
2 medical source opinions. *See* AR 328, 333, 338, 349, 374, 383, 447, 449, 455, 465,
3 471, 479, 493, 976, 989, 1012, 1024, 1099, 1176, 1188, 1223. The Court already
4 found that this evidence does not clearly show noncompliance and shows both
5 waxing and waning symptoms and persistent symptoms throughout the relevant
6 period.

7 As to Plaintiff's daily activities, the ALJ again relies on Plaintiff's reported
8 ability to care for her own hygiene, make breakfast for her children and drop them
9 off at school, spend time watching television, occasionally garden in the summer,
10 shop for groceries approximately twice per week, and do the cooking for the
11 household to partially discredit Plaintiff's testimony about her mental and physical
12 limitations. AR 22–23 (citing AR 338, 1038).

13 It is well established that “the Social Security Act does not require that
14 claimants be utterly incapacitated to be eligible for benefits, and many home
15 activities are not easily transferable to what may be the more grueling environment
16 of the workplace, where it might be impossible to periodically rest or take
17 medication.” *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). “Only if [her] level
18 of activity were inconsistent with [a claimant's] claimed limitations would these
19 activities have any bearing on [her] credibility.” *Reddick v. Chater*, 157 F.3d 715,
20 722 (9th Cir. 1998) (citations omitted).

1 Here, the ALJ did not explain how any of the activities of daily living that the
2 ALJ noted demonstrate that Plaintiff can sustain competitive employment on a full-
3 time basis. *See Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001) (“This court
4 has repeatedly asserted that the mere fact that a plaintiff has carried on certain daily
5 activities, such as grocery shopping, driving a car, or limited walking for exercise,
6 does not in any way detract from her credibility as to her overall disability.”). The
7 Court finds nothing in Plaintiff’s descriptions of her daily activities to be
8 inconsistent with her subjective symptom complaints. Nor do the activities
9 highlighted by the ALJ naturally translate to an ability to perform competitive work
10 on a sustained basis.

11 The ALJ did not provide clear and convincing reasons supported by
12 substantial evidence in partially rejecting Plaintiff’s subjective symptom testimony.
13 Accordingly, the Court grants summary judgment to Plaintiff on this ground and
14 denies summary judgment to the Commissioner on the same.

15 Having found harmful error in the ALJ’s assessment of medical source
16 opinions and Plaintiff’s subjective symptom testimony, the Court need not resolve
17 the remaining allegations of error.

18 ***Type of Remand***

19 Lastly, Plaintiff asks the Court to remand her claim for a benefits award. ECF
20 No. 10 at 17. The Court may remand a case “either for additional evidence and
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1 findings or to award benefits.” *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir.
2 1996). When the Court reverses an ALJ’s decision, “the proper course, except in
3 rare circumstances, is to remand to the agency for additional investigation or
4 explanation.” *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (citations
5 omitted). Nonetheless, the Ninth Circuit has endorsed an award for benefits where:
6 (1) the ALJ has failed to provide legally sufficient reasons for
7 rejecting [the claimant's] evidence, (2) there are no outstanding
8 issues that must be resolved before a determination of disability can
9 be made, and (3) it is clear from the record that the ALJ would be
10 required to find the claimant disabled were such evidence credited.
11 *Smolen*, 80 F.3d at 1292.

12 In this case, the Court has determined that the ALJ committed harmful error in
13 her evaluation of medical source opinions and Plaintiff’s subjective symptom
14 testimony. Were the rejected evidence credited, the ALJ would be required to find
15 Plaintiff disabled. The Commissioner has not presented any outstanding issues that
16 must be resolved. *See* ECF No. 13. Therefore, a remand for calculation of benefits
17 is warranted.

18 CONCLUSION

19 Having reviewed the record and the ALJ’s findings, this Court concludes that
20 the ALJ did not provide legally sufficient reasons for discounting the medical source
21 opinions and Plaintiff’s subjective complaints. In addition, the Court finds that

1 further administrative proceedings have not been shown to be necessary.

2 Accordingly, **IT IS HEREBY ORDERED** that:

3 1. Plaintiff's Motion for Summary Judgment, **ECF No. 10**, is **GRANTED**.

4 2. Defendant's Motion for Summary Judgment, **ECF No. 13**, is **DENIED**.

5 3. The matter is **REMANDED** to the Commissioner for calculation of
6 benefits.

7 4. Judgment shall be entered for Plaintiff.

8 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
9 Order, enter judgment as directed, provide copies to counsel, and **close the file** in
10 this case.

11 **DATED** February 17, 2023.

12
13 *s/ Rosanna Malouf Peterson*
14 ROSANNA MALOUF PETERSON
15 Senior United States District Judge
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